

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-1037
**Docket
No.**

76-1037

To be argued by:
William J. Dreyer

In The
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

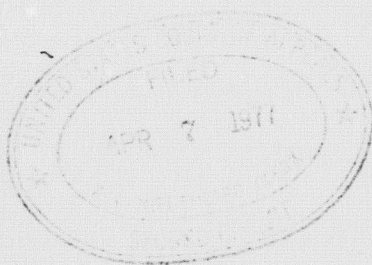
— against —

HARRY HASLAM,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of New York

BRIEF FOR APPELLEE



PAUL V. FRENCH
United States Attorney for
Northern District of New York
U.S. Post Office & Courthouse
Albany, New York 12207
(Attorney for Appellee)

TABLE OF CONTENTS

	Page
Issues Presented	1
Statement of the Case	1
Statement of Facts	2
ARGUMENT:	
POINT I — The District Court's determinations that defendant Haslam's statements were voluntarily made and the product of a rational mind were not errone- ous	5
Conclusion	9

Table of Cases

<i>Columbe v. Connecticut</i> , 367 U.S. 574, 576, 81 S.Ct. 1860, 1864 (1961)	6
<i>Greenwald v. Wisconsin</i> , 390 U.S. 519, 88 S.Ct. 1152 (1968)	6
<i>United States v. Collins</i> , 462 F.2d 792, 796 (2d Cir., (1972), cert. denied, 409 U.S. 988 (1972))	6
<i>United States Ex. Rel Cronan v. Mancusi</i> , 444 F.2d 51 (2d Cir., 1971)	5, 6

In The
United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff Appellee,

— against —

HARRY HASLAM,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of New York

BRIEF FOR APPELLEE

ISSUES PRESENTED

Whether the District Court's determinations that defendant Haslam's statements were voluntarily made and the product of a rational mind were erroneous.

STATEMENT OF THE CASE

On March 10, 1976, defendants Harry Haslam, Peter Ferraro, and Frank Barnes were charged in a two-count indictment with unlawfully entering a United States Post Office at Comstock, New York, in violation of 18 United States Code, Section 2115, and larceny of property of the United States, in violation of 18 United States Code, Section 641.

After arraignment, defendants Ferraro and Barnes entered pleas of guilty to Count I of the indictment. Defendant Haslam

moved for suppression of incriminating statements and any and all evidence derived therefrom. Following a suppression hearing on October 6, 1976, before the Honorable Lloyd F. MacMahon, sitting by designation, and after the latter's denial of the defendant's motion to suppress, defendant Haslam pleaded guilty to Count I of the Indictment. On December 9, 1976, the defendant was sentenced to be imprisoned for three years. The defendant appeals from the order and decision of Judge MacMahon (A-76 to 79),¹ denying the said motion.

STATEMENT OF FACTS

During the evening of February 21, 1976, a corrections officer from the Great Meadow Correctional Facility, Comstock, New York, while making his rounds, interrupted a burglary in progress at the United States Post Office at Comstock, New York. Police officers summoned by the corrections officer arrived at the post office and observed a broken post office window, an open rear door, a parked truck with a safe hanging from a block attached to the rear of the truck, and three sets of footprints in the snow behind the post office.

At approximately 10:20 p.m. that evening, state police investigator Joseph Louis arrived at the post office and was briefed as to what occurred (A-12). He learned that a registration check had determined that the truck found at the post office was registered to Frank Barnes of Kingston, New York. (A-12). While on the scene, Mr. Louis learned that one set of footprints followed by police officers led to a subject lying near a railroad track. The subject, having been arrested, initially identified himself as John Russo of New York City. That evening he told Mr. Louis that he was Peter Ferraro from Kingston, New York.

At approximately 8:00 a.m., on February 22, 1976, Officer Louis, while on his way to have breakfast in Fort Ann, New

¹ (A-), refers to the joint appendix and appropriate pages therein.

York, received a radio report of a stranger on the porch of the Foran residence in Fort Ann. (A-15). Although there was no information that the stranger was related to the postal burglary, Officer Louis realized that "it was something that should be checked out." (A-16). Arriving at the Foran home in civilian clothes and an unmarked car, Officer Louis saw a person standing on the porch. The person appeared to be cold and wet. Louis asked the person where he lived, and the person responded "here". (A-16). Louis told him he did not live there and asked for identification. The person responded "Vinnie Schoonmaker" from Albany. When Louis asked for an address in Albany, the person stated that he was really from Kingston. At this point, Louis called the subject toward him and both walked toward Louis' car. While walking, Louis asked the subject the purpose of his being at the Foran home. The subject stated that his car had broken down. He then stated that he had been separated from his friends. (A-16). Officer Louis then commented that the subject probably got separated from his friends back at the post office, patted the subject down, and advised him of his rights against self-incrimination. (A-18). Specifically, Louis advised the subject (A-19), that he had the right to remain silent, that anything he said could and would be used against him, that he had the right to confer with counsel prior to and during the interview, and that he could have an attorney free of charge if he could not afford one. When Louis completed the warnings, the subject said, "Yes, I know my rights. I was there." (A-19). Louis asked the subject if he was willing to talk to him, and the subject responded, "Yes, I was there at the post office." (A-20).

Officer Louis arrested the subject and drove him back to the state police office at Whitehall, New York. On the way, the subject identified himself as Harry Haslam and named Ferraro and Barnes as the other subjects. He made other statements which the government intended to offer at trial. (A-21 to 22).

At the suppression hearing, Officer Louis further testified that: (a) it had rained on and off throughout the night, (A-23);

(b) the temperature was in the 30's and low 40's, (A-23); (c) the defendant, when first approached at the Foran's residence, appeared wet, cold and tired, (A-23), but that his manner of speech was not affected by his condition (A-24); (d) Louis' car was heated during the trip to Whitehall, (A-25); (e) five or six minutes elapsed between the time he, Louis, arrived at the Foran home and the time he placed the defendant in the car, (A-25), and twenty minutes elapsed during the trip from Fort Ann to Whitehall (A-25); (f) the defendant did not appear to be mentally impaired in any way (A-48); (g) all statements by the defendant were made within the period of one hour, to include statements made at the Foran home, in Louis' car, and at the Whitehall station (A-49).

At the suppression hearing, defendant Haslam testified that on the evening and morning of February 21-22, 1976, he stayed in the hills around Comstock for about eight hours until he returned to a highway along which ran a barge canal. After reaching the road and canal, he began walking on the frozen canal. (A-49 to 54).

Defendant Haslam further testified that when he arrived at the Foran home he told the occupants that his car had broken down and that he wanted to use the phone. (A-69). While waiting for the lady of the house to return, defendant Haslam testified that Officer Louis arrived, ordered the defendant to his car and asked him his identity. Haslam stated that he was Vinnie Schoonmaker from Albany, whereupon Officer Louis, with his weapon out, placed Haslam under arrest for burglary. (A-56 to 57). He denied that Louis advised him of his Miranda warnings and that he made statements to Louis concerning being separated from his friends before being placed in the car.

Finally, defendant Haslam stated that at the time of his arrest he was a patient at a methadone clinic in Kingston and had failed to take his daily dose of methadone on Saturday, February 21, 1976. (A-55). As a result of his withdrawal from methadone, he began to feel ill effects by the time of his arrest. (A-56). Specifically, he suffered chills, sweating and vomiting. (A-64).

At the suppression hearing, John Burden, drug abuse counselor, Ulster County Drug Abuse Services, confirmed that defendant Haslam was being treated for heroin addiction and failed to take a daily dose of methadone on Saturday, February 21, 1976. (A-71). Mr. Burden described the effect of missing a dose as being "like a severe case of the flu." (A-72). He stated that a dose would last for 24 hours, and that after that the patient would feel progressively sicker without it. (A-73). Finally, he testified that the affect of withdrawal on mental capacity is a "gray area," (A-74), but agreed that the effects of withdrawal from methadone were not comparable to mental incapacity resulting from intoxication. (A-74).

ARGUMENT

POINT I

THE DISTRICT COURT'S DETERMINATIONS THAT DEFENDANT HASLAM'S STATEMENTS WERE VOLUNTARILY MADE AND THE PRODUCT OF A RATIONAL MIND WERE NOT ERRONEOUS.

The defendant's sole contention on appeal is that due to his physical, mental, and emotional condition at the time his statements were obtained by Officer Louis, he was incapable of (a) intelligently and knowingly waiving his right to remain silent, and (b) giving a voluntary statement (Appellate brief, page one).

In view of the District Court's findings that: (a) the defendant was entirely rational and in control of his mental faculties (A-76 to 77); (b) Officer Louis was credible; and (c) Officer Louis did not coerce or overbear the defendant's will or exploit his condition (A-78), the defendant's appellate position is that either the court's factual determinations were erroneous or the defendant's physical condition and withdrawal from methadone *per se* rendered the defendant incapable of exercising free will. The latter position has been rejected as a proposition of law. *United States Ex. Rel Cronan v. Mancusi*, 444 F.2d 51 (2d Cir., 1971).

The age, ability, and mental condition of the defendant are factors to be considered in determining voluntariness, *United States v. Collins*, 462 F.2d 792, 796 (2d Cir., 1972), cert. denied, 409 U.S. 988 (1972). Thus, even in circumstances where there is no allegation of overborne will or unscrupulous conduct on the part of the interrogator, a person's will may be sufficiently impaired due to an existing mental or physical incapacity so as to render statements involuntary. *Columbe v. Connecticut*, 367 U.S. 574, 576, 81 S.Ct. 1860, 1864 (1961); *Cronan, supra*, 444 F.2d 51, 52. Accordingly, the ultimate determination concerning voluntariness will be made in view of the totality of the circumstances. *Greenwald v. Wisconsin*, 390 U.S. 519, 88 S.Ct. 1152 (1968), and will depend upon facts disclosed by the record.

In the instant case, the court's finding that the defendant was rational and alert is supported by evidence that the defendant elected to walk on the barge canal to avoid detection, that the defendant told occupants of the Foran home that his car had broken down and that he needed to use the telephone, and that his responses to Officer Louis were coherent. Moreover, Mr. Burden's testimony did not establish that a failure to receive a single methadone dose would result in mental incapacity or anything worse than a condition similar to a "severe flu." Second, the court's rejection of the defendant's testimony that Officer Louis was extremely harsh and overbearing was based upon the court's observation on the stand of the demeanor of Officer Louis and defendant Haslam. Additionally, the evidence of record establishes the probability of the truthfulness of Officer Louis' testimony. Specifically, when Officer Louis arrived at the Foran home, he knew only that one suspect from Kingston, New York, had been arrested and that the truck at the post office belonged to another Kingston resident. When confronted with the suspicious statements by defendant Haslam that he lived "here" and had become separated from his friends, Louis perceived the need to issue warnings. As a result, defendant Haslam's statements provided the probable cause for the

arrest which then followed. It is unlikely that an officer with many years of experience and demonstrable knowledge of procedural safeguards would have jeopardized his investigation by proceeding in the manner suggested by Haslam.

Accordingly, it is submitted that (1) the District Court's findings of fact were not erroneous and (2) the defendant is not entitled to a presumption that he was incapable of exercising free and rational will.

CONCLUSION

For the foregoing reasons, the order of the District Court denying the defendant's motion for suppression of evidence should be affirmed.

Respectfully submitted,

PAUL V. FRENCH
United States Attorney

BY:

WILLIAM J. DREYER
Assistant U.S. Attorney

Affidavit of Service

Records and Briefs
For State and Federal Courts
Established 1881

313 Montgomery Street
Syracuse, New York 13202
(315) 422-4805

Russell D. Hay/President
Everett J. Rea/General Manager

Spaulding Law Printing

April 5, 1977

Re: U.S.A. against Harry Haslam

State of New York)
County of Onondaga ss.:
City of Syracuse)

EVERETT J. REA,

Being duly sworn, deposes and says: That he is associated with Spaulding Law
Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **Paul V. French, U.S. Attorney for Northern District of N.Y.,**

Attorney ☒ for Appellee,

☒ He personally served three (3) copies of the printed ☐ Record ☒ Brief ☐ Appendix
of the above entitled case addressed to:

TERENCE L. KINDLON, ESQ.
Attorney at Law
488 Broadway
Albany, New York 12207

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a
Post Office maintained by the United States Government in the City of Syracuse, New York, on

☐ By hand delivery

April 5, 1977.

Everett J. Rea

EVERETT J. REA

Sworn to before me this 5th day of April, 1977.

Thomas J. Auto

Notary Public
Commissioner of Deeds

cc: William J. Dreyer, Esq., Assistant U.S. Attorney